

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN SOTO PALMER, *et al.*,

Plaintiffs,

v.

STEVEN HOBBS, *et al.*,

Defendants.

Cause No. C22-5035RSL

ORDER GRANTING MOTION TO
INTERVENE

This matter comes before the Court on a “Motion to Intervene” filed by Jose Trevino (a resident of Granger, Washington), Ismael Campos (a resident of Kennewick, Washington), and Alex Ybarra (a State Representative and resident of Quincy, Washington). Dkt. # 57. Plaintiffs filed this lawsuit to challenge the redistricting plan for Washington’s state legislative districts, alleging that the Washington State Redistricting Commission (“the Commission”) intentionally configured District 15 in a way that cracks apart politically cohesive Latino/Hispanic¹ populations and placed the district on a non-presidential election year cycle in order to dilute Latino voters’ ability to elect candidates of their choice. Plaintiffs assert a claim under Section 2

¹ The Complaint and this Order use the terms “Hispanic” and “Latino” interchangeably to refer to individuals who self-identify as Hispanic or Latino and to persons of Hispanic Origin as defined by the United States Census Bureau and United States Office of Management and Budget.

1 of the Voting Rights Act (“VRA”), 52 U.S.C. § 10301(a), and request that the Court enjoin
2 defendants from utilizing the existing legislative map and order the implementation and use of a
3 valid state legislative plan that does not dilute, cancel out, or minimize the voting strength of
4 Latino voters in the Yakima Valley.

5 Plaintiffs named as defendants Steven Hobbs (Washington’s Secretary of State), Laurie
6 Jenkins (the Speaker of the Washington State House of Representatives), and Andy Billig (the
7 Majority Leader of the Washington State Senate). The claims against Representative Jenkins and
8 Senator Billig were dismissed on the ground that plaintiffs failed to plausibly allege an
9 entitlement to relief from either of them. Dkt. # 66 at 4-5. Secretary Hobbs does not have an
10 interest in defending the existing districting plan and has taken no position regarding the merits
11 of plaintiffs’ Section 2 claim. The intervenors assert that they are registered voters who intend to
12 vote in future elections and that they have a stake in this litigation. Mr. Trevino falls within
13 District 15 as drawn by the Commission, Mr. Campos falls within District 8 and could find
14 himself in District 15 if new boundaries are drawn, and Representative Ybarra represents
15 District 13, the boundaries of which may shift if plaintiffs’ prevail in this case.

16 **A. Intervention as of Right**

17 Rule 24 of the Federal Rules of Civil Procedure establishes the circumstances in which
18 intervention as a matter of right is appropriate:

19 (a) Intervention of Right. On timely motion, the court must permit anyone to
20 intervene who:

21 (1) is given an unconditional right to intervene by a federal statute; or

1 (2) claims an interest relating to the property or transaction that is the subject of
2 the action, and is so situated that disposing of the action may as a practical matter
3 impair or impede the movant's ability to protect its interest, unless existing parties
adequately represent that interest.

4 The Ninth Circuit has distilled four elements from Rule 24(a): intervention of right applies when
5 an applicant "(i) timely moves to intervene; (ii) has a significantly protectable interest related to
6 the subject of the action; (iii) may have that interest impaired by the disposition of the action;
7 and (iv) will not be adequately represented by existing parties." *Oakland Bulk & Oversized*
8 *Terminal, LLC v. City of Oakland*, 960 F.3d 603, 620 (9th Cir. 2020) (citation omitted).
9 Plaintiffs argue that intervenors cannot satisfy the first, second, or fourth criteria. "While an
10 applicant seeking to intervene has the burden to show that these four elements are met, the
11 requirements are broadly interpreted in favor of intervention." *Citizens for Balanced Use v.*
12 *Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (citation omitted).

13 **(1) Timeliness**

14 Intervenor's motion to intervene was timely filed. The motion was filed a week after it
15 became apparent that none of the named defendants were interested in defending the existing
16 redistricting map, and it had had no adverse impact on the resolution of the then-pending motion
17 for preliminary injunction.

18 **(2) Significant Protectable Interest**

19 A proposed intervenor "has a significant protectable interest in an action if (1) it asserts
20 an interest that is protected under some law, and (2) there is a relationship between its legally
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1 protected interest and the plaintiff's claims." *Kalbers v. United States Dep't of Justice*, 22 F.4th
2 816, 827 (9th Cir. 2021) (citation omitted). "The interest test is not a clear-cut or bright-line rule,
3 because no specific legal or equitable interest need be established. . . . Instead, the 'interest' test
4 directs courts to make a practical, threshold inquiry and is primarily a practical guide to
5 disposing of lawsuits by involving as many apparently concerned persons as is compatible with
6 efficiency and due process." *United States v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir.
7 2002) (internal quotation marks, citations, and alterations omitted). "The relationship
8 requirement is met if the resolution of the plaintiff's claims actually will affect the applicant."
9 *Id.*

10 Intervenor Trevino and Campos claim "an interest in ensuring that any changes to the
11 boundaries of [their] districts do not violate their rights to 'the equal protection of the laws'
12 under the Fourteenth Amendment" Dkt. # 57 at 6. Representative Ybarra claims "a
13 heightened interest in not only the orderly administration of elections, but also in knowing
14 which voters will be included in his district." *Id.* All three intervenors claim an interest in the
15 boundaries of the legislative districts in which they find themselves and "in ensuring that
16 Legislative District 15 and its adjoining districts are drawn in a manner that complies with state
17 and federal law." *Id.* at 6-7.

18 As an initial matter, under Washington law, intervenors have no right or protectable
19 interest in any particular redistricting plan or boundary lines. The legislative district map must
20 be redrawn after each decennial census: change is part of the process. Intervenor, in keeping
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1 with all other registered voters in the State of Washington, may file a petition with the state
2 Supreme Court to challenge a redistricting plan (RCW 44.05.130), but they have no role to play
3 in the redistricting process. Nor is there any indication that a general preference for a particular
4 boundary or configuration is a legally cognizable interest.

5 Intervenorors do not allege that their right to vote or to be on the ballot will be impacted by
6 this litigation. Nor have they identified any direct and concrete injury that has befallen or is
7 likely to befall them if plaintiffs' Section 2 claim is successful. Rather, they broadly allege that
8 they have an interest in ensuring that any plan that comes out of this litigation complies with the
9 Equal Protection Clause, state law, and federal law. But a generic interest in the government's
10 "proper application of the Constitution and laws, and seeking relief that no more directly and
11 tangibly benefits [the intervenors] than it does the public at large[,] does not state an Article III
12 case or controversy" (*Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573-74 (1992)), and it would
13 be premature to litigate a hypothetical constitutional violation (*i.e.*, being subjected to a racial
14 gerrymander through a remedial map established in this action) when no such violative conduct
15 has occurred. With the possible exception of Representative Ybarra (discussed below),
16 intervenors have not identified a significant protectable interest for purposes of intervention
17 under Rule 24(a).

18 **(3) Adequacy of Representation**

19 In addition to the uncognizable interest in legislative district boundaries and the generic
20 interest in ensuring that any new redistricting map complies with the law, Representative Ybarra
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1 claims an interest in avoiding delays in the election cycle and in knowing ahead of time which
2 voters will be included in his district. The Court assumes, for purposes of this motion, that these
3 interests are significant enough to give Representative Ybarra standing to pursue relief in this
4 litigation. He cannot, however, show that the existing parties will not adequately represent these
5 interests.

6 “The most important factor to determine whether a proposed intervenor is adequately
7 represented by a present party to the action is how the intervenor’s interest compares with the
8 interests of existing parties. . . . Where the party and the proposed intervenor share the same
9 ultimate objective, a presumption of adequacy of representation applies, and the intervenor can
10 rebut that presumption only with a compelling showing to the contrary. . . .” *Perry v.*
11 *Proposition 8 Off. Proponents*, 587 F.3d 947, 950-51 (9th Cir. 2009) (internal quotation marks,
12 citations, and alterations omitted). The arguably protectable interests asserted by Representative
13 Ybarra were ably and successfully urged by Secretary Hobbs in opposition to plaintiffs’ motion
14 for a preliminary injunction. Concerns regarding delays in the election cycle that might arise if
15 district boundaries were redrawn this spring and the disruption to candidates who were
16 considering a run for office were identified by Secretary Hobbs and played a part in the Court’s
17 decision.

18 Because Representative Ybarra’s arguably protectable interests are essentially identical to
19 the arguments that were actually asserted by Secretary Hobbs, Representative Ybarra may defeat
20 the presumption (and evidence) of adequate representation only by making a compelling
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1 showing that Secretary Hobbs will abandon or fail to adequately make these arguments in the
 2 future. *See Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) (assessing the proposed
 3 intervenor’s efforts to rebut the presumption in terms of three factors: “(1) whether the interest
 4 of a present party is such that it will undoubtedly make all of a proposed intervenor’s arguments;
 5 (2) whether the present party is capable and willing to make such arguments; and (3) whether a
 6 proposed intervenor would offer any necessary elements to the proceeding that other parties
 7 would neglect”). Representative Ybarra has not attempted to show that Secretary Hobbs will fail
 8 to pursue arguments regarding election schedules and the need for certainty as this case
 9 progresses. The intervenors have therefore failed to show that the protectable interests they have
 10 identified will not be adequately represented in this litigation.²

11 **B. Permissive Intervention**

12 Pursuant to Rule 24(b), “[o]n timely motion, the court may permit anyone to intervene
 13 who . . . has a claim or defense that shares with the main action a common question of law or
 14 fact. . . . In exercising its discretion, the court must consider whether the intervention will
 15 unduly delay or prejudice the adjudication of the original parties’ rights.” In the Ninth Circuit,
 16 “a court may grant permissive intervention where the applicant for intervention shows

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 18 ² Representative Ybarra also argues that he will be able to add to the litigation by providing a
 19 “valuable perspective on the close interaction between race and partisanship” in opposition to plaintiffs
 20 Section 2 claim, and that none of the existing parties is prepared to make such arguments. Dkt. # 57 at 9.
 21 That a proposed intervenor has testimony or other evidence that is relevant to a claim or defense does
 22 not mean that they have a significant protectable interest for purposes of Rule 24(a), however. It is only
 23 protectable interests that must be adequately represented in the litigation when considering intervention
 as a matter of right.

1 (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim
2 or defense, and the main action, have a question of law or a question of fact in common." *City of*
3 *Los Angeles*, 288 F.3d at 403 (citation omitted). If the initial conditions for permissive
4 intervention are met, the court is then required to consider other factors in making its
5 discretionary decision on whether to allow permissive intervention.

6 These relevant factors include the nature and extent of the intervenors' interest,
7 their standing to raise relevant legal issues, the legal position they seek to advance,
8 and its probable relation to the merits of the case. The court may also consider
9 whether changes have occurred in the litigation so that intervention that was once
10 denied should be reexamined, whether the intervenors' interests are adequately
11 represented by other parties, whether intervention will prolong or unduly delay the
12 litigation, and whether parties seeking intervention will significantly contribute to
13 full development of the underlying factual issues in the suit and to the just and
14 equitable adjudication of the legal questions presented.

15 *Spangler v. Pasadena City Bd. of Ed.*, 552 F.2d 1326, 1329 (9th Cir. 1977) (internal footnotes
16 omitted). Plaintiffs argue that intervenors' motion is untimely, intervention would risk undue
17 delay and would unfairly prejudice plaintiffs, and intervenors' chosen counsel is likely to be a
18 witness in this matter and has already filed a lawsuit challenging Legislative District 15 that is
19 inconsistent with his representation here. Plaintiffs request that, if intervenors are permitted to
20 participate in this litigation at all, it should be in the role of *amicus curiae*, not as parties.

21 (1) Timeliness

22 For the reasons stated above, intervenors' motion to intervene was timely filed.

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(2) Undue Delay and Unfair Prejudice

Plaintiffs argue that the resolution of their Section 2 claim will be unduly delayed and they will be unfairly prejudiced if they are forced to expend resources responding to intervenors' arguments. Plaintiffs acknowledge, however, that intervenors – unlike the defendants they chose to name – intend to oppose plaintiffs' request for relief under Section 2. It is unclear how forcing a litigant to prove its claims through the adversarial process could be considered unfairly prejudicial or how the resulting delay could be characterized as undue. "That [intervenors] might raise new, legitimate arguments is a reason to grant intervention, not deny it. *W. Watersheds Project v. Haaland*, 22 F.4th 828, 839 (9th Cir. 2022). The presence of an opposing party is the standard in federal practice: intervenors' insertion into that role would restore the normal adversarial nature of litigation rather than create undue delay or unfair prejudice. To the extent plaintiffs' opposition to intervention is based on their assessment that intervenors' arguments are meritless or irrelevant, the Court declines to prejudge the merits of intervenors' defenses in the context of this procedural motion.

(3) Complications Arising From Counsel's Participation

Plaintiffs do not cite, and the Court is unaware of, any authority supporting the denial of a motion to intervene because of objections to the intervenors' counsel. At present, the Court does not perceive an insurmountable conflict between the claims set forth in *Garcia v. Hobbs*, C22-5152RSL, and intervenors' opposition to plaintiffs' Section 2 claim. If it turns out that counsel's representation gives rise to a conflict under the Rules of Professional Conduct or if he is a

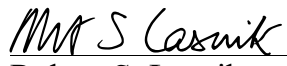
1 percipient witness from whom discovery is necessary, those issues can be heard and determined
2 through motions practice as the case proceeds.

3 **(4) Other Relevant Factors**

4 After considering the various factors set forth in *Spangler*, 552 F.3d at 1329, the Court
5 finds that, although intervenors lack a significant protectable interest in this litigation, the legal
6 positions they seek to advance in opposition to plaintiffs' Section 2 claim are relevant and, in the
7 absence of other truly adverse parties, are likely to significantly contribute to the full
8 development of the record and to the just and equitable adjudication of the legal questions
9 presented.

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11 For all of the foregoing reasons, the motion to intervene (Dkt. # 57) is GRANTED.
12 Intervenor shall file their proposed answer (Dkt. # 57-1) within seven days of the date of this
13 Order. The case management deadlines established at Dkt. # 46 remain unchanged.

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15 Dated this 6th day of May, 2022.

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17 Robert S. Lasnik
18 United States District Judge
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